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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

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OFFICE OF PETITIONS

In re Patent No. 7,142,399	:	
Hasegawa et al.	:	DECISION ON REQUEST
Issue Date: 28 November, 2006	:	FOR
Application No. 09/901,438	:	RECONSIDERATION OF
Filed: 9 July, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 9281-3996	:	
	:	

This is a decision on the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed on 29 January, 2007. Patentees request that the patent term adjustment indicated in the patent be corrected from eight hundred twenty-nine (829) days to one thousand seven hundred one (1701) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On 28 November, 2006, the above-identified application matured into U.S. Patent No. 7,142,399. The instant request for reconsideration filed 29 January, 2007, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of 829 days. Patentees request correction of the patent term adjustment to increase the patent term adjustment to 1701 days on the basis

that the patent issued 3 years and 872 days after the date on which the application was filed.

It is agreed that the instant patent issued 3 years and 872 days after its filing date. However, § 1.703(b)(1) provides, in pertinent part that:

the period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) ... and ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

Thus, the filing of a request for continued examination (RCE) cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment.

In this instance, an RCE was filed on 7 June, 2005. Thus, the ability to accumulate additional patent term adjustment against the three-year pendency provision ended 6 June, 2005. Accordingly, the period of adjustment under § 1.702(b) is 331 days, counting the number of days beginning on 10 July, 2004, and ending on 6 June, 2005.

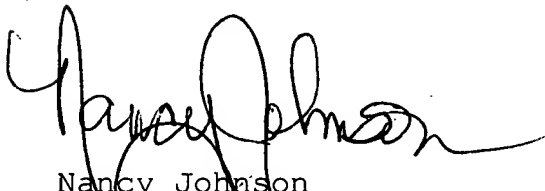
Moreover, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions;

Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay of 829 days attributable to grounds specified in § 1.702(a)(1) and (2) overlaps with the 331 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 829 days.

In view thereof, the patent properly issued with a patent term adjustment of 829 days.

The \$200.00 fee set forth in 37 CFR 1.18(e) will be charged to counsel's deposit account as authorized in the petition.

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions